Supreme Court, U.S.
FILED
(1)
07-930 JAN 8 - 2008
OFFICE OF THE CLERK

79

No. _____

In The
Supreme Court of the United States

JENGGI KALUOM, Individually, and
on behalf of those similarly situated,

Petitioner,

vs.

STOLT OFFSHORE INC.,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

JAMES T. LISTON
Counsel of Record
FRANCIS I. SPAGNOLETTI
DAVID S. TOY
SPAGNOLETTI & CO.
401 Louisiana, 8th Floor
Houston, Texas 77002-1629
Telephone: 713-653-5600
Facsimile: 713-653-5656
Email: mailto:frank@spaglaw.com
fspagnoletti@spaglaw.com

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals for the Fifth Circuit erred in concluding that the Penalty Wage statutes for seamen – *i.e.*, 46 U.S.C. § 10313 and 46 U.S.C. § 10504 – do not apply to seamen on foreign vessels in harbors of the United States, irrespective of the type of voyage on which they are engaged.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and who appeared before the United States Court of Appeals for the Fifth Circuit:

Jenggi Kaluom and all other individuals similarly situated

Petitioner (Plaintiff/Appellant below) is a Malaysian national who is a former borrowed employee and seaman, who was employed by the Respondent, Stolt Offshore, Inc. (Defendants/Appellees below). Mr. Kaluom is representative of a class of seaman who served aboard Stolt vessels.

Stolt Offshore Inc.

Respondent (Defendant/Appellee below)

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	v
Opinions Below	1
Basis for Jurisdiction	1
Statutes Involved	2
Statement of the Case	2
Argument & Authorities	4
Conclusion and Prayer for Relief	24

TABLE OF CONTENTS – Continued

Page

Appendix

Petitioner's
Appendix 1: Opinion of the United States Court of Appeals for the Fifth Circuit, issued October 10, 2007. *Kaluom v. Stolt Offshore, Inc.*, 504 F.3d 511 (5th Cir. 2007) ..... App. 1

Petitioner's
Appendix 2: Opinion of the United States District Court for the Southern District of Texas, Galveston Division, issued February 6, 2006. *Kaluom v. Stolt Offshore, Inc.*, 2006 WL 28795 (S.D. Tex. 2006) ... App. 27

Petitioner's
Appendix 3: 46 U.S.C. § 10313 ..... App. 37

Petitioner's
Appendix 4: 46 U.S.C. § 10504 ..... App. 39

TABLE OF AUTHORITIES

Page

UNITED STATES SUPREME COURT CASES

Bethesda Hospital Assn. v. Bowen, 485 U.S. 399 (1988) 8, 17

Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 14

Demarest v. Manspeaker, 498 U.S. 184 (1991) 14

Department of Housing & Urban Development v. Rucker, 535 U.S. 125 (2002) 14

Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) 14

Isbrandtsen Co. v. Johnson, 343 U.S. 779 (1952) 21

K Mart Corp. v. Cartier, Inc., 486 U.S. 281 (1988) 8, 17

McMahon v. United States, 342 U.S. 25 (1951) 21

Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986) 8

Strathearn S.S. Co. Ltd v. Dillon, 252 U.S. 348 (1920) 22, 23

Warner v. Goltra, 293 U.S. 155 (1934) 21

UNITED STATES COURT OF APPEALS CASES

Doyle v. Huntress, Inc., 419 F.3d 3 (1st Cir. 2007) 19, 20

Forster v. Oro Navigation Co., 228 F.2d 319 (2nd Cir. 1955) 21

TABLE OF AUTHORITIES – Continued

Page

Governor & Co. of Bank of Scotland v. Sabay, 211 F.3d 261 (5th Cir. 2000) 2, 5, 6

In re Universal Seismic Associates, Inc., 288 F.3d 205 (5th Cir. 2002) 16

Kaluom v. Stolt Offshore, Inc., 504 F.3d 511 (5th Cir. 2007) ..... *passim*

Monteiro v. Sociedad Maritima San Nicolas, S.A., 280 F.2d 568 (2nd Cir. 1960) 23

Su v. M/V Southern Aster, 978 F.2d 462 (9th Cir. 1992) 13, 15, 22

United States v. Rivera, 131 F.3d 222 (1st Cir. 1997) 19

United States v. Sischo, 262 U.S. 165 (1923) 19

United States v. Standard Accident Ins. Co., 280 F.2d 445 (1st Cir. 1960) 19

Washington v. Maricopa County, Ariz., 152 F.2d 556 (9th Cir. 1945) 19

UNITED STATES DISTRICT COURT CASES

George v. Kramo Ltd., 796 F.Supp. 1541 (E.D. La. 1992) 10

Kaluom v. Stolt Offshore, Inc., 2006 WL 28795 (S.D. Tex. 2006) 1

TABLE OF AUTHORITIES – Continued

Page

UNITED STATES STATUTES

29 U.S.C. § 206 ..... 4, 5

29 U.S.C. § 207 ..... 4, 5

46 U.S.C. § 877 17

46 U.S.C. § 883 17

46 U.S.C. § 10301 ..... 6, 9, 11, 13, 16

46 U.S.C. § 10313 ..... *passim*

46 U.S.C. § 10501 ..... *passim*

46 U.S.C. § 10504 ..... *passim*

RULES

Fed. R. Civ. P. 56 3

OPINIONS BELOW

The opinion of United States District Court for the Southern District of Texas, Galveston Division appears at *Kaluom v. Stolt Offshore, Inc.*, 2006 WL 28795 (S.D. Tex. 2006), and is reprinted at Petitioner's Appendix pp. 27-35. The opinion of the United States Court of Appeals for the Fifth Circuit appears at *Kaluom v. Stolt Offshore, Inc.*, 504 F.3d 511 (5th Cir. 2007), and is reprinted at Petitioner's Appendix pp. 1-26.

BASIS FOR JURISDICTION

The Supreme Court has jurisdiction over this Petition for Writ of Certiorari based on the following facts:

(i) the United States Court of Appeals for the Fifth Circuit entered its judgment on October 10, 2007. *See Kaluom v. Stolt Offshore, Inc.*, 504 F.3d 511 (5th Cir. 2007), Petitioner's Appendix at pp. 1-26.

(ii) there were no motions for rehearing or reconsideration filed in the Court of Appeals.

(iii) this Petition seeking Writ of Certiorari is filed within 90 days of the day the Court of Appeals issued its opinion.

(iv) the Supreme Court therefore has jurisdiction to review a petition for writ of

certiorari pursuant to 28 U.S.C. section 1254(1) because it is timely filed.

STATUTES INVOLVED

This Petition involves provisions of the penalty wage statutes for seamen – 46 U.S.C. § 10313 and 46 U.S.C. § 10504. The statutes are reprinted in full in Petitioner's Appendix at pp. 37-40.

STATEMENT OF THE CASE

This is a seaman's claim for penalty wages arising under the penalty wage statutes, 46 U.S.C. §§ 10313 and 10504, which entitle seamen to receive prompt payment of their full wages within a specified time after a voyage ends. If prompt and full payment is not made within a specified time, the vessel owner or master must pay the seaman a penalty equal to two days' wages for each day payment is delayed. 46 U.S.C. §§ 10313(f) and 10504(c); *see Governor & Co. of Bank of Scotland v. Sabay*, 211 F.3d 261, 266-67 (5th Cir. 2000).

In 2004, Petitioner Jenggi Kaluom sued Respondent Stolt Offshore Inc. ("Stolt") in the U.S. District Court for the Southern District of Texas, Galveston Division. Kaluom's Complaint invoked admiralty jurisdiction and asserted a penalty wage claim for himself and on behalf of other, similarly situated seamen.

Respondent Stolt moved for summary judgment pursuant to Federal Rule of Civil Procedure 56, arguing that the penalty wage statutes did not apply because the vessel on which Kaluom worked was not engaged on one of the voyage types specified in either 46 U.S.C. section 10313(a) (*i.e.*, a foreign or intercoastal voyage) or section 10504(a) (*i.e.*, a coastwise voyage). Plaintiff responded by arguing that while it was true that *a vessel of the United States* must be engaged on a specific type of voyage in order to be subject to the wage penalty statutes, a foreign vessel in a harbor of the United States need not be engaged on any such voyage – it is simply enough for the foreign vessel to be "in a harbor of the United States."

In 2006, the District Court signed an order granting Defendant Stolt's motion for summary judgment and a final judgment disposing of all claims and parties on grounds the penalty wage statutes did not apply as a matter of statutory interpretation. *See* Petitioner's Appendix at pp. 27-36. In March 2006, Kaluom timely filed a Notice of Appeal to the Court of Appeals for the Fifth Circuit. The Court of Appeals entertained the appeal and in a written opinion dated October 10, 2007, affirmed the District Court's judgment. *Kaluom v. Stolt Offshore, Inc.*, 504 F.3d 511 (5th Cir. 2007); Petitioner's Appendix at pp. 1-26. This Petition for Writ of Certiorari follows.

ARGUMENT & AUTHORITIES

Jenggi Kaluom worked as a seaman aboard the derrick/pipelay barge, "DLB 801" on the Outer Continental Shelf of the United States during late 2002, yet he was not paid his full wages that were owed to him by law.[1] Accordingly, he filed suit asserting a penalty wage claim both to recover his own wages and acted as representative of a class of similarly situated foreign seamen who are also entitled to collect penalty wages for their labor.

A. General Background

Numerous foreign companies operating in the United States import foreign laborers – such as Petitioner Jenggi Kaluom – to work aboard foreign-flag vessels to develop resources on the Outer Continental

---

[1] In the District Court, Kaluom alleged that Defendant Stolt failed to pay him the balance of the wages that are owed to him based on *United States* labor law: *i.e.*, Stolt failed to pay him the federal minimum hourly wage as well as overtime as mandated by the maximum hour provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207 (FLSA). Instead, Kaluom was paid at *Malaysian* pay rates, which are considerably less than those mandated by the FLSA. In the underlying lawsuit, Kaluom seeks to recover the statutorily mandated double penalty wages for each day the payment of his wages were delayed, based on the wage and hour rates as mandated by the FLSA. Kaluom's claim for FLSA violations were presented in a separate lawsuit to the U.S. District Court in Galveston. *See* No. 3:05-CV-642, *Jenggi Kaluom v. Stolt Offshore, Inc.* This case was settled by agreement in December 2007, and dismissed with prejudice by the U.S. District Court.

Shelf ("OCS") off the U.S. coast. These laborers perform the dangerous and demanding work necessary to explore for and exploit oil and gas resources for domestic consumption. Working immediately offshore Texas, Louisiana, Mississippi and Alabama, these foreign workers toil for 12-hour days, seven days a week, often for months on end. Many of these foreign workers earn far below the federally mandated minimum wage of $5.15 per hour,[2] and most are not paid overtime at the 1.5 times the legal pay rate for the hours they work in excess of 40 hours in a work week.[3]

In addition to being paid sub-standard wages, these foreign seamen do not receive their wages within the statutory period for discharge. Rather, they must often wait months – as in Mr. Kaluom's case – to receive payment for their labor. To guard against this practice, seamen, including those on foreign vessels in United States ports, are entitled to claim penalty wages if they are not paid within the time specified. 46 U.S.C. §§ 10313(i); 10504(e); *see Governor & Co. of Bank of Scotland*, 211 F.3d at 267.

B. Facts of Petitioner Kaluom's Claim

Petitioner Jenggi Kaluom ("Kaluom") was employed as a seaman by a Malaysian crewing company

---

[2] 29 U.S.C. § 206 (40-hour week).

[3] 29 U.S.C. § 207 (overtime provisions).

PPSB[4] and assigned to work aboard the DLB 801, a foreign vessel that was performing subsea pipeline laying operations on the OCS. Kaluom worked two stints aboard the DLB 801, the last time from September 18, 2002 until he was discharged on November 27, 2002. *Kaluom*, 504 F.3d at 513-14.

Respondent Stolt was owner *pro hac vice* of the vessel DLB 801, and manned, victualed, and navigated it. *Kaluom,* 504 F.3d at 513; App. at 3. The penalty wage statute makes both the owner and master liable for penalty wages. *See* 46 U.S.C. §§ 10313(g); 10504(c); *Governor & Co. of Bank of Scotland*, 211 F.3d at 267. Kaluom was not paid his legal wages within the statutory time allowed from discharge from the vessel. *Kaluom,* 504 F.3d at 513. Because Kaluom did not timely receive the full wages to which he was entitled for his service aboard the DLB 801, he is statutorily entitled to recover penalty wages from Stolt. 46 U.S.C. § 10313(i); 46 U.S.C. § 10504(e). The District Court's final judgment of February 6, 2006 dismissed all Plaintiff's claims against Respondent Stolt. *See* Petitioner's Appendix at pp. 27-36. The Court of Appeals for the Fifth Circuit affirmed the District Court's result, concluding that the voyage requirements outlined in 46 U.S.C. sections 10301 and 10501 apply to seamen on foreign vessels who wish to invoke the penalty wage provisions found in sections 10313 and 10504 of title

---

[4] Kaluom's employer, PPSB, was not a party to the underlying lawsuit or appeal.

46 of the U.S. Code. According to the appeals court, "The vessel on which Kaluom was working, the DLB 801, was not on any of the types of voyages that would bring the vessel under the penalty wage statutes' umbrella." *Kaluom*, 504 F.3d at 522-23; Petitioner's Appendix at pp. 1-26.

C. Summary of Argument

The Fifth Circuit Court of Appeals erred in failing to apply the plain and unambiguous language of the penalty wage statutes to allow Petitioner Kaluom to assert his claim. As did the District Court, the Court of Appeals incorrectly concluded that the penalty wage statutes did not apply to Petitioner's claim because the foreign-flag vessel on which he worked was not engaged on a foreign or intercoastal or coastwise voyage. While it is true that *American* vessels must be engaged on one of these type of voyages before the penalty wage statutes apply, the prerequisite does *not* apply to foreign vessels in the harbors of the United States. The plain language of the penalty wage statutes make them applicable to foreign vessels within harbors of the United States, with no precondition of a specific type of voyage.[5]

The Court of Appeals concluded that the penalty wage statutes did not apply to Kaluom's case because:

---

[5] The Court of Appeals assumed, arguendo, that the DLB 801 was in a harbor of the United States. F.3d at 519, fn. 11; Petitioner's Appendix at p. 17.

(1) although the two sections cited by Kaluom unambiguously state there is no voyage prerequisite to apply the act to foreign vessels, a reading of wage legislation "as a whole" reflects that there should be such a prerequisite; and (2) one cannot deem any legislative intent from the ordering of the wage statutes because the 1983 recodification was simply a housekeeping matter and U.S. shipping law had always recognized such a prerequisite. As shown, both conclusions are incorrect; this Court does not follow a rule of statutory construction absolutely requiring a court to ignore a specific provision in favor of a more general overview of a statute[6] and the 1983 amendments and recodification of the shipping law possibly effected a change of substantive law. For this reason, the penalty wage statutes should be interpreted exactly as they are written, in order to effectuate Congress' intent.

As a final matter, the penalty wage statutes are remedial in nature, and federal courts apply liberal presumptions in favor of seamen. If there is any doubt about the actual meaning of the plain language of the penalty wage statutes, the language must be construed in favor of seamen rather than in favor of

---

[6] In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Bethesda Hospital Assn. v. Bowen*, 485 U.S. 399, 403-05 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 220-21 (1986).

employers. Applying a voyage-specific prerequisite (as did the courts below) runs contrary to the remedial intent of the statutes.

Issue presented: Do the Penalty Wage statutes – 46 U.S.C. § 10313 and 46 U.S.C. § 10504 – apply to a seaman on a foreign vessel when in a harbor of the United States, irrespective of the type of voyage?

The penalty wage statutes plainly provide that a seaman working on a foreign-flag vessel in a United States harbor is eligible to assert a penalty wage claim in a United States court. Foreign vessels in a harbor of the United States are governed by these provisions, and need not be engaged in a specific voyage type in order for the penalty wage provisions to become applicable. This conclusion follows from the plain text of the penalty wage statutes, which are codified in Title 46 of the United States Code, the relevant portions of which provide as follows:

> § 10301. Application
>
> (a) *Except as otherwise specifically provided, this chapter applies to a vessel of the United States –*
>
> (1) on a voyage between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies); or

(2) of at least 75 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.[7]

. . .

(c) *Unless otherwise provided, this chapter does not apply to a foreign vessel.*

. . .

§ 10313. Wages

. . .

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is

---

[7] The Gulf of Mexico is considered part of the Atlantic Ocean for determining voyage type. *See George v. Kramo Ltd.*, 796 F.Supp. 1541, 1544 (E.D. La. 1992) (the Gulf of Mexico is considered by the United States Coast Guard as within the Atlantic Ocean, supporting finding that vessel on a voyage from Houma, Louisiana to Seattle, Washington, was intercoastal in nature and thus subject to the penalty wage statutes).

discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

. . .

(i) *This section applies to a seaman on a foreign vessel when in a harbor of the United States*. The courts are available to the seaman for the enforcement of this section.

46 U.S.C. §§ 10301, 10313 (emphasis added). Petitioner's Appendix at pp. 37-40.

Additionally, section 10501 provides in relevant part:

§ 10501. Application

(a) *Except for a vessel to which chapter 103 of this title applies*, this chapter applies to a vessel of at least 50 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port

in one State and a port in another State (except an adjoining State).

. . .

(c) *Unless otherwise provided, this chapter does not apply to a foreign vessel.*

. . .

§ 10504. Wages

. . .

(b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.

(c) When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

. . .

(e) *This section applies to a seaman on a foreign vessel when in a harbor of the United States.* The courts are available to the seaman for the enforcement of this section.

46 U.S.C. §§ 10501, 10504 (emphasis added). Petitioner's Appendix at pp. 37-40.

The plain language of the penalty wage statutes makes clear that *except as otherwise provided*, neither chapter 103 governing foreign or intercoastal voyages, nor chapter 105 governing coastwise voyages, apply to foreign vessels. The penalty wage sections of those chapters, however, *specifically provide the exception* that makes that penalty wage remedy available to "a seaman on a foreign vessel when in a harbor of the United States." 46 U.S.C. § 10313(i); *see also* 46 U.S.C. § 10504(e). The fact that foreign vessels in U.S. ports are not subject to the same provisions of the penalty wage acts that are applicable to American vessels was acknowledged by the Ninth Circuit Court of Appeals in 1992. *See Su v. M/V Southern Aster*, 978 F.2d 462, 470 (9th Cir. 1992) ("[t]he Act makes an exception for foreign vessels in American ports: 'This section applies to a seafarer on a foreign vessel when in a harbor of the United States.'").

There is no basis for applying the specific voyage requirements to a foreign vessel when in a harbor of the United States. *Except as otherwise specifically provided*, the specific voyage requirements in the respective *chapters* apply to "a vessel of the United States . . . ," and do not "apply to a foreign vessel." 46 U.S.C. §§ 10301(a), 10301(c) (emphasis added); *accord* 46 U.S.C. §§ 10501(a), 10501(c). The individual

penalty wage *sections* are specifically applicable, as an exception to the overarching exclusions, to a "seaman on a foreign vessel when in harbor of the United States." Id.

There are several reasons why the decision reached by the Court of Appeals is incorrect and must be reversed:

1. The penalty wage statute is unambiguous and, therefore, must be interpreted exactly as written.

"[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980). When the language of a statute is unambiguous, "judicial inquiry is complete except in rare and exceptional circumstances . . . [such as] where the application of the statute as written will produce a result 'demonstrably at odds with the intentions of its drafters.'" *Demarest v. Manspeaker,* 498 U.S. 184, 190 (1991), *quoting Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 571 (1982) (penalty wage case). The penalty wage statutes are clear and unambiguous. As such, reference to legislative history is inappropriate and unnecessary. *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 132-33 (2002).

The plain language of the penalty wage statutes is clear: the voyage-specific prerequisites apply to vessels of the United States, but not to seamen on foreign vessels when in a harbor of the United States. *See Su v. M/V Southern Aster*, 978 F.2d 462, 470 (9th Cir. 1992). A foreign vessel's origin and destination are patently immaterial to a foreign seaman's right to seek protection of the wage penalty remedy for non-payment of wages. The statute should be given its plain and obvious meaning, and the decisions below overruled.

2. Petitioner does not read the statutory provisions in "isolation" or "independently," as charged by the Court of Appeals. When one follows the rule of statutory interpretation used by this Court, sections 10313 and 10504 are properly read by themselves.

The Court of Appeals decided against Appellant because, in its view, it was improper to read the two sections of the U.S. Code "in isolation"; instead, the appeals court looked to other portions of seamen's legislation to divine a requirement that a foreign vessel in a harbor of the United States must be engaged on a specific type of voyage in order to come within the ambit of the penalty wage statutes. As the Fifth Circuit Court of Appeals stated, Petitioner Kaluom maintains that:

> . . . we should read sections 10313 and 10504 independently of 46 U.S.C. §§ 10301 and 10501's voyage requirements. He bases this argument in large part on the fact that Chapters 103 and 105 of Title 46 are generally inapplicable to foreign vessels. Kaluom contends that the penalty wage statutes' plain language, legislative intent, and legislative history support his view of the correct construction of penalty wage statutes 46 U.S.C. §§ 10313 and 10504.

The Fifth Circuit Court of Appeals disagreed with Kaluom, stating that it would not read sections 10313 and 10504 in what it termed an "independent manner." *Kaluom*, 504 F.3d at 515 (emphasis added). To reach this result, the Fifth Circuit employed a circuit rule of statutory interpretation:

> When construing a statutory provision, we first consider the statute as a whole before turning to the particular provision at issue. *See In re Universal Seismic Associates, Inc.*, 288 F.3d 205, 207 (5th Cir. 2002) (when interpreting statutes, this circuit looks to the plain language of the statute, "'*reading it as a whole* and mindful of the linguistic choices made by Congress'". . . .).

Kaluom, 504 F.3d at 517 (emphasis added) (internal citations omitted). The approach used by this Court in recent years, however, shows that the sections can properly be read as advanced by Kaluom:

> In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, *as well as* the language and design of the statute as a whole.

K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988) (emphasis added); *Bethesda Hospital Assn. v. Bowen*, 485 U.S. 399, 403-05 (1988). Given this Court's approach, it is proper to look at the particular statutory language.

It is proper to read sections 10313 and 10504 as written because it is logical and rational to do so. It makes little sense to require a foreign vessel to be engaged on a particular type of voyage; by their nature, most foreign vessels will naturally be involved in an overseas voyage simply to arrive in a harbor in this country. Also, requiring a foreign vessel to be engaged on certain types of U.S. voyages would suggest that Congress sanctioned illegality. This is because foreign-flag vessels cannot travel from port to port in the United States carrying cargo. The Merchant Marine Act of 1920 (commonly called 'the Jones Act') prohibits transportation of merchandise in foreign-flag vessels between points embraced within coastwise laws of the United States. *See* 46 U.S.C. §§ 877, 883. This trade is reserved for United States vessels. Finally, there is the additional point that Chapters 103 and 105 of Title 46 are generally inapplicable to foreign vessels, making reference to them irrelevant.

Accordingly, it is logical and perfectly rational for a court to read sections 10313 and 10504 and give them their plain meaning. The Fifth Circuit Court of Appeals erred in doing otherwise.

3. The Court of Appeals was incorrect in stating that, "the change in statutory form caused by the 1983 rearranging amendments was not meant to create any substantive change." *Kaluom*, 504 F.3d at 522. On the contrary, the 1983 amendments achieved change.

In the courts below, Petitioner Kaluom argued that the legislative history (by which he means the order in which the statute was codified) of the penalty wage statute militated in favor of his reading of the law. The Court of Appeals rejected his argument, with these words:

> For over one hundred years, voyage requirements and penalty wage provisions resided in the same statutory section, and the change in statutory form caused by *the 1983 rearranging amendments was not meant to create any substantive change*. Certainly it was not thereby intended, for the first time in the nation's history, to grant seamen on foreign vessels an entitlement to penalty wages on voyages as to which seamen on American vessels would have no such entitlement.

Kaluom, 504 F.3d at 522 (emphasis added). The conclusion reached by the Fifth Circuit conflicts with that reached by the Court of Appeals for the First Circuit in *Doyle v. Huntress, Inc.*, 419 F.3d 3 (1st Cir. 2007), when specifically addressing the 1983 changes to the shipping laws:

> The "presumption that codification is not intended to make changes of substantive law . . . is particularly true where . . . the legislative history shows a positive disclaimer of any such intent." *United States v. Standard Accident Ins. Co.,* 280 F.2d 445, 447 (1st Cir. 1960) (citing *United States v. Sischo,* 262 U.S. 165, 168-69 (1923); *Washington v. Maricopa County, Ariz.*, 152 F.2d 556, 559 (9th Cir. 1945)). However, we would be hard put to find that Congress showed a "positive disclaimer of any such intent" in this case. This circuit previously noted that the signals in the legislative history of the revision are mixed. *United States v. Rivera,* 131 F.3d 222, 226 (1st Cir. 1997). "[T]he stated purpose of the legislation was simply to recodify in an organized fashion the then-existing law relating to the safety of vessels and protection of seamen." *Id.* Both the Senate and House Reports emphasize repeatedly that no substantive changes of a controversial nature were intended. *See* S.Rep. No. 98-56, at 1. . . .

> Despite these disclaimers, Congress anticipated questions about the substantive revisions made to the laws. *The committee wants to make it clear . . . that the bill . . . does in fact make a great many substantive changes to the present law*. Those changes are all either minor changes, adjustments, or modifications, *or they are more significant changes* to which the Committee received no objection and which the Committee believed would enhance the clarity and effectiveness of the law and the [sic] generally accepted by the industry. Thus, *if a comparison of the language of this bill with the existing law shows that a substantive change has resulted, it should be understood that that change was intended by the Committee*. . . . H.R.Rep. No. 98-338, at 120, *reprinted in* 1983 U.S.C.C.A.N. 924, 932 (emphasis added).

Doyle, 419 F.3d at 10 (emphasis added). Thus, the Fifth Circuit Court of Appeals's conclusion that the 1983 recodification was not necessarily meant to bring substantive change to the law is incorrect. The foregoing clearly demonstrates the Committee identified substantive changes. Congress specified its intent by the words of the statute, not what the Fifth Circuit has interpreted.

4. When there is a question of statutory interpretation of seamen's remedial legislation, as there is here, federal courts should apply liberal presumptions in favor of seamen.

The two penalty wage statutes at issue in this Petition are remedial legislation that is intended to protect and benefit seamen. As such, they should be construed in favor of seamen. Legislation for the benefit of seamen is to be construed liberally in their favor. *McMahon v. United States,* 342 U.S. 25, 27 (1951); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 782 (1952) (whenever the Supreme Court has considered legislation in aid of seamen, the Court has emphasized that such legislation is largely remedial and calls for liberal interpretation in favor of the seamen.) This holds true for statutes concerning seamen's wages and penalty wages. The maritime law by inveterate tradition has made the ordinary seaman a member of a favored class; he is a ward of the admiralty. Discrimination may thus be rational in respect of remedies for wages. *Isbrandtsen,* 343 U.S. at 782-83, quoting *Warner v. Goltra,* 293 U.S. 155, 162 (1934); *see also Forster v. Oro Navigation Co.*, 228 F.2d 319, 319-20 (2nd Cir. 1955) (the penalty wages statute, designed to protect seamen, must be liberally interpreted for their benefit). Given this strong, federal policy of promoting the seamen's welfare, any possible issue in interpreting the text of the penalty wage statutes must be resolved in Kaluom's favor to

allow his penalty wage claim, not in Stolt's favor to bar it.

The opinion of the Court of Appeals sets aside the plain language of the statute and, in so doing, improperly skirts its remedial intent. This is improper because, as this Court has noted:

> It is said that it is the purpose to limit the benefit of the [penalty wage statutes] to American seamen, notwithstanding the provisions giving access to seamen on foreign vessels to the courts of the United States. . . . [S]uch limited construction would have a tendency to prevent the employment of American seamen, and to promote the engagement of those who were not entitled to sue for . . . wages under the provisions of the law.

Strathearn S.S. Co. Ltd. v. Dillon, 252 U.S. 348, 354-55 (1920). In *Strathearn*, this Court construed the penalty wage statute of 1915 to allowed a British seaman serving on a British-flag ship to sue for his withheld wages while his ship was situated in the port of Pensacola, Florida. *Accord Su v. M/V Southern Aster*, 978 F.2d 462, 471 (9th Cir. 1992) ("But Congress also sought to enhance the competitiveness of American shippers. It worried that subjecting only United States flag vessels to the wage provisions would put United States shipping at a competitive disadvantage. *To level the playing field, it extended the Act to foreign vessels.* 50 Cong. Rec. 55748-49 (Oct. 22, 1913).") (emphasis added). As this Court in

Strathearn observed, "we have no doubt as to the authority of Congress to pass a statute of this sort, *applicable to foreign vessels* in our ports and controlling the employment and payment of seamen *as a condition of the right of such foreign vessels to enter and use the ports of the United States.*" *Strathearn*, 252 U.S. at 356 (emphasis added).

The penalty wage statutes plainly give seamen aboard foreign vessels the right to bring a penalty wage claims if that vessel reaches a United States port. This right arises once a seaman's wages for service on that vessel are not paid, regardless of the vessel's voyage before or after reaching the United States port. "The natural reading [of the penalty wage statute] is rather [that] a seaman on a foreign vessel obtains his right *once the specified facts occur* while the vessel is in a harbor of the United States, and that this right can be enforced in any court of the United States where jurisdiction over the vessel or her owner can be had." *Monteiro v. Sociedad Maritima San Nicolas, S.A.*, 280 F.2d 568, 574 (2nd Cir. 1960) (emphasis added).

This reading of the statute is logical, supported by common sense, and is not precluded by the form of the statute or the history of the statute. This Court should exercise its role as guardian of admiralty and maritime law and correct the record accordingly.

———◊———

CONCLUSION AND PRAYER FOR RELIEF

Kaluom worked as a seaman on a Stolt-operated foreign vessel, the DLB 801. The plain language of both penalty wage statutes makes them available to seamen on foreign vessels in harbors of the United States, which are excepted from the voyage-specific prerequisite that the statute requires of vessels of the United States. The result squares with logic and common sense: why require a foreign vessel to be engaged on a coastwise voyage in order for the wage penalties to be applicable?

The remedial nature of the penalty wage statutes also militates in favor of the plain language interpretation. Construing the statute to defeat Kaluom's claim would not extend the Court's protection to him and a similarly situated class, wards of admiralty who have long needed and enjoyed that protection. Construing the statute in Stolt's favor would not protect American shipping and commerce, and would give the owners and operators of foreign vessels the right to use United States harbors, but with legal and judicial impunity to discharge seamen at our harbors without paying them their wages in accordance with law.

The courts below erred in their construction of the penalty wage statutes. The statutes are unambiguous and should be interpreted in accordance with their plain, ordinary meaning: *i.e.*, that seamen serving on foreign vessels that find themselves in United States ports may bring suit in United States

court to recover penalty wages. The lower courts' insistence that a foreign vessel be on some specific type of voyage is not supported by the statutes' plain language. The judgment below should be reversed. Kaluom prays for all relief to which he is justly entitled.

Respectfully submitted,

JAMES T. LISTON
Counsel of Record
FRANCIS I. SPAGNOLETTI
DAVID S. TOY
SPAGNOLETTI & CO.
401 Louisiana, 8th Floor
Houston, Texas 77002-1629
Telephone: 713-653-5600
Facsimile: 713-653-5656

Attorneys for Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40396

JENGGI KALUOM, Individually, and on behalf of those similarly situated,

Plaintiff-Appellant,

versus

STOLT OFFSHORE INC; ET AL

Defendants,

STOLT OFFSHORE INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas

Before GARWOOD, WIENER, and CLEMENT, Circuit Judges.

GARWOOD, Circuit Judge:

Plaintiff-appellant Jenggi Kaluom (Kaluom) appeals from the order and final judgment entered by the United States District Court for the Southern District of Texas, Galveston Division, on February 6, 2006, granting defendant-appellee Stolt Offshore Inc. (Stolt)'s motion for summary judgment and dismissing Kaluom's suit with prejudice. We agree with the

district court that the voyage requirements set out in 46 U.S.C. §§ 10301 and 10501 apply to those foreign vessels encompassed by penalty wage statutes 46 U.S.C. §§ 10313 and 10504. Accordingly, because the foreign vessel on which Kaluom worked was not embarked on one of the voyage types described by sections 10301 and 10501, we affirm.

FACTS AND PROCEEDINGS BELOW

Kaluom is a Malaysian national employed by Malaysian crewing company PPSB.[1] PPSB assigned Kaluom to work aboard the DLB 801, a foreign vessel documented under foreign laws. From September 18, 2002 to November 27, 2002, while the DLB 801 was performing subsea pipeline laying operations on the United States' outer continental shelf, Kaluom worked aboard the DLB 801, first as a rigger but later as a pipe facing machine (PFM) operator. On November 27, 2002, while the DLB 801 was working in the Gulf of Mexico, Kaluom was injured in an accident and had to be airlifted to a hospital in Galveston, Texas.

On October 21, 2004, Kaluom brought suit against defendant-appellee Stolt, a Louisiana corporation with its principal place of business in the Southern District of Texas. Kaluom asserted a penalty wage claim for himself and on behalf of others similarly situated, under 46 U.S.C. §§ 10313 and

---

[1] PPSB is not a party to this lawsuit.

10504.[2] Kaluom contended that Stolt "manned, victualed and navigated the [DLB 801], and employed the vessel master," and that Stolt failed to pay him the balance of wages owed to him under United States labor laws. Kaluom received wages at a Malaysian pay rate but contends that he should have been paid based on United States labor laws because the Fair Labor Standards Act (FLSA) mandates overtime as well as a minimum hourly wage that is higher than its Malaysian counterpart.

On November 4, 2005, Stolt moved for summary judgment, contending *inter alia* that the penalty wage statutes Kaluom relied on, 46 U.S.C. §§ 10313 and 10504, could not be read in isolation from 46 U.S.C. §§ 10301 and 10501, which articulate specific voyage prerequisites to applying Chapters 103 and 105 of Title 46 of the United States Code. Stolt argued that, in light of 46 U.S.C. §§ 10301 and 10501, Kaluom could not rely on 46 U.S.C. §§ 10313 and 10504's penalty wage provisions because the DLB 801 was on neither a foreign or intercoastal voyage, as articulated by section 10301, nor a coastwise voyage, as described by section 10501.[3] On December 21,

---

[2] Kaluom originally filed suit against Stolt and three other corporations that are no longer parties. Kaluom voluntarily dismissed his claims against those three corporations on May 9, 2005.

[3] Stolt also argued that the FLSA was inapplicable to Kaluom and that the penalty wage statutes could not be applied against Stolt because it was neither the owner nor the master of the DLB 801. Stolt has not re-argued the latter of these two

(Continued on following page)

2005, Kaluom responded to Stolt's motion for summary judgment, asserting that penalty wage statutes 46 U.S.C. §§ 10313 and 10504 "appl[y] once a foreign vessel is in a harbor of the United States, regardless of the type of voyage that the vessel is engaged in."

On February 6, 2006, the district court granted Stolt's motion for summary judgment and entered a final judgment dismissing with prejudice "[a]ny and all" of Kaluom's claims. The court reasoned:

> "The DLB 801 was engaged in a pipeline installation project in the Gulf of Mexico during the period of Kaluom's assignment. The vessel's originating port was in Fourchon, Louisiana, and there is no evidence that the ship went to any other port, nor is there any evidence that it engaged in a foreign, intercoastal or coastwise voyage. . . . The requirement of a foreign, intercoastal or coastwise voyage is a prerequisite to the application of the penalty wage provisions. *See* 46 U.S.C. § 10301, 10501. If a ship is not engaged in one of the specified voyages, the penalty wage provisions do not protect the seamen on those vessels. A plain reading of the statute

---

points on appeal and therefore we need not address it. *See Lyndon Prop. Ins. Co. v. Duke Levy & Assocs., LLC*, 475 F.3d 268, 270 n.1 (5th Cir. 2007) (failure to brief an issue constitutes waiver). Further, because we find that 46 U.S.C. §§ 10301 and 10501's voyage requirements dispose of this appeal, we decline to venture into a discussion of the FLSA. *See infra* note 6.

> compels this result, and to read the statute in any other way would be erroneous."[4]

On March 8, 2006, Kaluom timely filed a notice of appeal.

STANDARD OF REVIEW

This court reviews both the grant of summary judgment and a district court's statutory construction *de novo*. *Lincoln Gen. Ins. Co. v. Aisha's Learning Ctr.*, 468 F.3d 857, 858 (5th Cir. 2006); *FTC v. Nat'l Bus. Consultants, Inc.*, 376 F.3d 317, 319 (5th Cir. 2004). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2552 (1986).

---

[4] The district court dismissed the notion that Kaluom's removal to Galveston, Texas could constitute a voyage satisfying the requirements of

§ 10301 and § 10501:

> "The fact that Plaintiff ended up at a hospital in Galveston, Texas does not change this result. First, travel from a port in Louisiana to a port in Texas does not qualify as a coastwise voyage because Louisiana and Texas are adjoining states. *See* 46 U.S.C. § 10501. Second, the DLB 801 did not go to Galveston, Texas, but remained in the Gulf after Plaintiff was transported [by aircraft] back to shore to receive treatment for his injuries."

DISCUSSION

Kaluom contends the district court misinterpreted 46 U.S.C. §§ 10313 and 10504 when it concluded that, before those statutory provisions may apply to a foreign vessel, the vessel must be on one of the voyage types specified in 46 U.S.C. §§ 10301 (foreign or intercoastal voyages) and 10501 (coastwise voyage). Kaluom does not seriously challenge the district court's finding that the DLB 801 was not on a foreign, intercoastal, or coastwise voyage, and he admits that for seamen serving on *American* vessels, the penalty wage statutes *only* apply if the voyage requirements are met. Kaluom nevertheless argues on appeal that there is no voyage prerequisite for seamen serving on *foreign* vessels when those vessels are in United States harbors.

Kaluom brought suit under two penalty wage provisions: 46 U.S.C. §§ 10313 and 10504. Sections 10313 and 10504 both make clear that they apply "to a seaman on a foreign vessel when in a harbor of the United States." 46 U.S.C. § 10313(i); *id.* § 10504(e). Kaluom asserts that in his case, because the DLB 801 is a foreign vessel,[5] we should read sections 10313 and 10504 independently of 46 U.S.C. §§ 10301 and 10501's voyage requirements. He bases this argument in large part on the fact that Chapters 103 and 105 of Title 46 are generally inapplicable to foreign vessels.

---

[5] The vessel to which Kaluom was assigned to work, the DLB 801, is a "derrick/pipelay barge" that is owned by a foreign company and that is registered in a foreign nation.

Kaluom contends that the penalty wage statutes' plain language, legislative intent, and legislative history support his view of the correct construction of penalty wage statutes 46 U.S.C. §§ 10313 and 10504. We disagree with Kaluom and decline to read sections 10313 and 10504 in the independent manner he advocates.[6]

---

[6] Because 46 U.S.C. §§ 10301 and 10501's voyage requirements dispose of this appeal, we do not decide other issues raised. We do not decide whether Kaluom has sued the correct party under 46 U.S.C. §§ 10313 and 10504, which provide that if payment of wages is not properly made, penalty wages may be demanded from a vessel's *"master or owner."* 46 U.S.C. §§ 10313(g), 10504(c) (emphasis added); *see also Governor & Co. of the Bank of Scotland v. Sabay*, 211 F.3d 261, 272 (5th Cir. 2000)(stating that 46 U.S.C. § 10313(g) "imposes liability *only* on the vessel's 'master or owner' "). The district court noted: "At the time of the events giving rise to this lawsuit, the DLB 801 was owned by Class 3 Shipping Limited, a Bermuda corporation, and it was documented under the laws of Panama."

We do not decide whether the FLSA applies to Kaluom. Kaluom asserts that Stolt should have paid him at the FLSA's minimum hourly wage and overtime rates, 29 U.S.C. §§ 206 and 207, rather than at Malaysian pay rates. 29 U.S.C. § 213(a)(12) exempts from the FLSA's minimum wage and maximum hour requirements "any employee employed as a seaman on a vessel other than an American vessel." 29 U.S.C. § 203(p) states that the term " 'American vessel' includes any vessel which is documented or numbered under the laws of the United States." Also excluded from the FLSA's maximum hour requirements is "any employee employed as a seaman." 29 U.S.C. 213(b)(6). The FLSA does not define the term "seaman." *Dole v. Petroleum Treaters, Inc.*, 876 F.2d 518, 520, 521 (5th Cir. 1989). The term's definition under the FLSA is not identical to its definition under the Jones Act. *Id.* at 520. Kaluom argues that the DLB 801 is included within the definition of "American vessel" because Stolt, an

(Continued on following page)

I. The statutory text

"[T]he starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 100 S.Ct. 2051, 2056 (1980). "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Id.* We consider the text of 46 U.S.C. §§ 10313 and 10504 in turn.

American company, acted as the vessel's owner *pro hac vice* and was responsible for manning the vessel. Kaluom also asserts that, in terms of the FLSA's applicability only, he is not a "seaman" and that therefore the exemptions found at 29 U.S.C. § 213(a)(12) and (b)(6) are irrelevant. Again, we decline to reach this issue because we find that 46 U.S.C. §§ 10301 and 10501's voyage requirements dispose of this case.

A. 46 U.S.C. § 10313[7]

---

[7] Here, we discuss 46 U.S.C. §§ 10313 and 10301. 46 U.S.C. § 10313, "Wages," states in its entirety:

> "**(a)** A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.
>
> **(b)** Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.
>
> **(c)** When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.
>
> **(d)** A seaman is not entitled to wages for a period during which the seaman –
>
> > **(1)** unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or
> >
> > **(2)** lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.
>
> **(e)** After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5

(Continued on following page)

days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht.

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section."

46 U.S.C.A. § 10313 (2006).

46 U.S.C. § 10301, "Application," states:

"**(a)** Except as otherwise specifically provided, this chapter applies to a vessel of the United States –

(1) on a voyage between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies); or

(2) of at least 75 gross tons as measured under section 14502 of this title, or an alternate tonnage

(Continued on following page)

Subsections (e) and (f) of 46 U.S.C. § 10313 set out a seaman's entitlement to "one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage" and to the balance of wages due the seaman at "the end of a voyage." Subsection (g) indicates that failure to adhere to subsection (f)'s provision for wages at a voyage's end leads to penalty wages: "When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed." 46 U.S.C. § 10313(g).

46 U.S.C. § 10301(a) states that Chapter 103 of Title 46 (sections 10301-10321) applies to vessels that are on a foreign voyage – a voyage "between a port in the United States and a port in a foreign country (except a port in Canada, Mexico, or the West Indies)" – or an intercoastal voyage – a voyage "between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific

---

measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean.

(b) This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.

(c) Unless otherwise provided, this chapter does not apply to a foreign vessel."

46 U.S.C.A. § 10301 (2006).

Ocean." *See id.* § 10301(a)(1)-(2). Subsection 10301(c), however, states that "[u]nless otherwise provided, this chapter [chapter 103] does not apply to a foreign vessel." *Id.* § 10301(c).

Kaluom asserts that 46 U.S.C. § 10313(i) indicates that section 10313's penalty wage provision, but not section 10301's requirement of a foreign or intercoastal voyage, applies to foreign vessels. Subsection 10313(i) states: "This section applies to a seaman on a foreign vessel when in a harbor of the United States." *Id.* § 10313(i).

Kaluom's argument against applying a voyage requirement fails. When construing a statutory provision, we first consider the statute as a whole before turning to the particular provision at issue. *See In re Universal Seismic Associates, Inc.*, 288 F.3d 205, 207 (5th Cir. 2002) (when interpreting statutes, this circuit looks to the plain language of the statute, "'reading it as a whole and mindful of the linguistic choices made by Congress'" (quoting *Whatley v. Resolution Trust Corp.*, 32 F.3d 905, 909 (5th Cir. 1994))). Section 10313 is part of Chapter 103, and 46 U.S.C. § 10301 clearly dictates that Chapter 103 applies only to those vessels that meet the foreign or intercoastal voyage requirement. 46 U.S.C. §10301(a). Section 10313's penalty wage provision is accordingly limited by the foreign or intercoastal voyage requirement described in section 10301 – regardless of whether the vessel at issue is American or foreign. Because the DLB 801 was on neither a foreign nor an intercoastal voyage, section 10313's penalty wage provision is inapplicable to Kaluom.

B. 46 U.S.C. § 10504[8]

---

[8] In this section, we discuss 46 U.S.C. §§ 10501 and 10504. The complete text of 46 U.S.C. §10504, "Wages," states:

> "**(a)** After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.
>
> **(b)** The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.
>
> **(c)** When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.
>
> **(d)** Subsections (b) and (c) of this section do not apply to:
>
> **(1)** a vessel engaged in coastwise commerce.
>
> **(2)** a yacht.
>
> **(3)** a fishing vessel.
>
> **(4)** a whaling vessel.
>
> **(e)** This section applies to a seaman on a foreign vessel when in harbor of the United States. The courts are available to the seaman for the enforcement of this section."

46 U.S.C.A. § 10504 (2006).

(Continued on following page)

Our analysis of the other penalty wage statute relied on by Kaluom, 46 U.S.C. § 10504, mirrors the foregoing analysis of section 10313. Subsections (a) and (b) of section 10504 set out a seaman's entitlement to wages. Subsection (a) states that "[a]fter the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage." 46 U.S.C. § 10504(a). Subsection (b) states that the "master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier." 46 U.S.C. § 10504(c) exacts penalty wages for the failure to adhere to subsection (b): "When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner

---

46 U.S.C. §10501, "Application," states:

> "**(a)** Except for a vessel to which chapter 103 of this title applies, this chapter applies to a vessel of at least 50 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title on a voyage between a port in one State and a port in another State (except an adjoining State).
>
> **(b)** This chapter does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage.
>
> **(c)** Unless otherwise provided, this chapter does not apply to a foreign vessel."

46 U.S.C.A. § 10501 (2006).

shall pay to the seaman 2 days' wages for each day payment is delayed."[9]

46 U.S.C. § 10501 indicates that Chapter 105 (sections 10501-10509) of Title 46 applies to those vessels not covered by Chapter 103 that are on "a voyage between a port in one State and a port in another State (except an adjoining State)." *Id.* § 10501(a). Subsection 10501(c) states that "[u]nless otherwise provided, this chapter does not apply to a foreign vessel."

Kaluom relies on 46 U.S.C. § 10504(e), which states that section 10504 "applies to a seaman on a foreign vessel when in harbor of the United States."[10] However, like subsection 10313(i), subsection 10504(e) cannot be read in isolation from the chapter that surrounds it. Because section 10501 dictates that Chapter 105 applies only to those vessels not covered by Chapter 103 that have embarked on "a voyage between a port in one State and a port in another State (except an adjoining State)," and because the DLB 108 was not on such a voyage, Kaluom may not take advantage of 46 U.S.C. § 10504's penalty wage provision.

---

[9] Several vessel types are explicitly excluded from taking advantage of 46 U.S.C. § 10504, including "vessel(s) engaged in coastwise commerce." 46 U.S.C. § 10504(d)(1).

[10] This provision excludes "a" from the phrase "when in a harbor of the United States."

We also note that both sections 10313 and 10504 refer to a vessel's "voyage." *See id.* § 10313(e) (describing the seaman's entitlement to wages "[a]fter the beginning of the voyage"); *id.* § 10504(a) (same); *id.* § 10313(f) (discussing the seaman's entitlement to the balance of his wages "[a]t the end of a voyage"). These references support our determination that 46 U.S.C. §§ 10313 and 10504 should be read in conjunction with 46 U.S.C. §§ 10301 and 10501, as these references employ the term "voyage" in a manner consistent with use of the term elsewhere. *Cf. Su v. M/V S. Aster*, 978 F.2d 462, 469 (9th Cir. 1992) (declining to define "voyage" as a "leg of the trip" because "such a definition conflicts with the structure and language of the [Wage] Act").

Moreover, we reject Kaluom's assertion that inclusion of the phrase "in a harbor of the United States" in subsections 10313(i) and 10504(e) indicates the lack of a voyage requirement where foreign vessels are at issue. In *Su v. M/V Southern Aster*, 978 F.2d 462 (9th Cir. 1992), the Ninth Circuit concluded that the "in a harbor of the United States" phrase serves as a "jurisdictional provision." *See* 978 F.2d at 468. Thus, the Ninth Circuit relied in part on that phrase in holding that 46 U.S.C. § 10313(f),(g) "should not apply to foreign seafarers discharged from foreign ships in foreign ports." *See id.* at 467, 470. The Ninth Circuit explained, "Had Congress wanted to include all foreign vessels, . . . it could have done so expressly. The language of the Wage Act is clear. It applies only to foreign vessels in United

States ports." *Id.* at 471.[11] We conclude that in this case, too, the statutory language is clear: the voyage requirements in sections 10301 and 10501 apply to seamen on both American and foreign vessels who wish to invoke the penalty wage provisions in 46 U.S.C. §§ 10313 and 10504.

II. Legislative intent

"[I]n rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling." *Griffin v. Oceanic Contractors, Inc.*, 102 S.Ct. 3245, 3250 (1982). This, however, is not such a rare case.

First, if we were to construe subsections 10313(i) and 10504(e) in the independent manner Kaluom advocates, refraining from applying 46 U.S.C. §§ 10301 and 10501's voyage requirements to foreign vessels, at least one of the subsections referring to

---

[11] It is unclear whether the DLB 801 fulfills this jurisdictional requirement under 46 U.S.C. §§ 10313(i) and 10504(e) that it be "in a harbor of the United States." The DLB 801 was out in the Gulf of Mexico when Kaluom was airlifted to Galveston. Even assuming that Kaluom was legally discharged from the DLB 801 when he became unable to return to the vessel, there still is no evidence that the DLB 801 was in an American harbor at any time pertinent to Kaluom's suit against Stolt. Nevertheless, we decline to decide the matter because the voyage requirements in sections 10301 and 10501 dispose of this case. We assume *arguendo* only that the "in a harbor of the United States" requirement was met.

foreign vessels would be redundant. This is so because if the voyage requirements are read separately from subsections 10313(i) and 10504(e), 46 U.S.C. § 10313(i) and 46 U.S.C. § 10504(e) would be without a meaningful difference. If Congress had intended these subsections to be free of Chapter 103's and Chapter 105's voyage requirements, then Congress would likely have indicated the disparate treatment of foreign vessels by creating a single, separate section dealing with penalty wages for seamen on foreign vessels.

Second, there is strong evidence that Congress *did not* intend for foreign vessels to be treated differently under the penalty wage statutes. The United States Supreme Court has stated that the purpose of amendments made in 1915 to the penalty wage provisions – resulting in the application of penalty wages to seamen on foreign vessels – was to equalize the rights of foreign and United States seamen.[12] *See Strathearn S.S. Co. v. Dillon*, 40 S.Ct. 350, 352 (1920) (stating that, at least in regards to section 4530, the Seaman's Act of March 4, 1915, 38 Stat. 1164, "manifests the purpose of Congress to place American and foreign seamen on an equality of right"). Construing 46 U.S.C. §§ 10313 and 10504 in the manner Kaluom advocates would place seamen on foreign vessels in a better position than their colleagues on American

[12] The penalty wage statutes first came into existence in 1872, but have applied to foreign vessels only since the amendments made in 1915.

vessels: seamen on foreign vessels could claim penalty wages in situations where seamen on American vessels could not. Thus, legislative intent supports applying 46 U.S.C. §§ 10301 and 10501's voyage requirements to foreign vessels that otherwise fall under 46 U.S.C. §§ 10313's or 10504's umbrella.

III. Legislative History

The penalty wage statutes' legislative history is likewise conclusive. As explained below, from 1878 to 1983, there was just one section setting out both the voyage requirements and the penalty wage provisions. This historical structure indicates that 46 U.S.C. §§ 10301 and 10501's voyage requirements should be read together with the penalty wage provisions – even when dealing with foreign vessels.

"Seamen's wages were the subject of legislation enacted by the first Congress, giving seamen the right to collect their wages 'as soon as the voyage is ended.'" *Governor & Co. of the Bank of Scotland v. Sabay*, 211 F.3d 261, 266 (5th Cir. 2000) (quoting Act of July 20, 1790, ch. 29, § 6, 1 Stat. 131, 133-34). "Congress established penalty wages approximately 80 years later, in 1872." *Id.* (citing Shipping Commissioners Act of 1872, ch. 322, § 35, 17 Stat. 262, 269). The Shipping Commissioners Act of 1872 dictated that "every master or owner who neglects or refuses to make payment in manner aforesaid without sufficient cause shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days,

not exceeding ten days, during which payment is delayed. . . ." § 35, 17 Stat. at 269. The section of the 1872 Act setting out this penalty wage provision begins with describing the seaman's entitlement to wages, stating in pertinent part, "[T]he master or owner of any ship *making voyages as hereinbefore described in section twelve* of this act . . . shall pay to every seaman his wages within two days after the termination of the agreement, or at the time such seaman is discharged, whichever first happens. . . ." *Id.* (emphasis added). Section twelve of the 1872 Act refers to foreign and intercoastal voyages.[13] *See* § 12, 17 Stat. at 264-65.

"The 1790 and 1872 statutes were the basis for § 4529 of the Revised Statutes, which contained language substantially identical to that in the 1872 statute." *Sabay*, 211 F.3d at 267 (citing Rev. Stat. § 4529 (2d ed. 1878)). Section 4529 of the 1878 Revised Statutes incorporated both the 1872 Act's reference to foreign and intercoastal voyages and the 1872 Act's provision for penalty wages. Thus, from

---

[13] Section 12 specifically excludes vessels on coastwise voyages. In 1874, Congress added a provision that made clear that penalty wages would not be available to those seamen on "vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions." Act of June 9, 1874, ch. 260, 18 Stat. 64-65; *Dunham v. M/V Marine Chemist*, 812 F.2d 212, 213 n.1 (5th Cir. 1987). *See also infra* note 14.

1878, the provision for penalty wages and the description of voyage requirements were located in the *same statutory section*.

Twenty years later, in 1898, Congress amended the penalty wage statute, "eliminat[ing] the ten-day limitation for penalty wages, but decreas[ing] the penalty from two to one day's pay for each day of delay." *Sabay*, 211 F.3d at 267 (citing Act of Dec. 21, 1898, ch. 28, § 4, 30 Stat. 755, 756). The 1898 amendment also added to section 4529's reach, dictating payment to seamen by the "master or owner of any vessel making *coasting voyages*."[14] § 4, 30 Stat. at

---

[14] The addition of vessels making "coasting voyages" to the penalty wage provision's purview in 1898 was not meant to affect the exception for "coastwise voyages" in the 1872 Act. Before the penalty wage statute's recodification in 1983, it "provided for a right to collect penalty wages in coasting voyages, but . . . specifically excluded seamen on coastwise voyages from collecting penalty wages." *Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1288 (11th Cir. 2000) (discussing the predecessor statute to 46 U.S.C. § 10504, 46 U.S.C. §§ 596, 544). "The current statute . . . does not distinguish between coasting and coastwise voyages. Instead, the current statute, which does not mention coasting voyages, establishes three designations for voyages: foreign, intercoastal, and coastwise." *Id.* at 1288-89. The Eleventh Circuit has stated that "the exclusion of 'a vessel engaged in coastwise commerce' from the right to recover penalty wages effectively eliminates the benefit of the penalty wage provision for coastwise voyages." *Id.* at 1289 (citing this circuit's decision in *Dunham v. M/V Marine Chemist*, 812 F.2d 212, 215 (5th Cir. 1987), and asserting that that decision held that "a claim for penalty wages, pursuant to section 10504, no longer applies to coastwise voyages"). However, the Eleventh Circuit also noted that, although perhaps rare, "there may be

(Continued on following page)

756 (emphasis added). Section 4529 continued to refer to foreign and intercoastal voyages. *Id.* As with the 1878 version of section 4529, the 1898 amended version included voyage requirements and provided for penalty wages within a single statutory section.

In 1915, section 4529 was again amended, and penalty wages were "doubled to the present two days' pay for each delay-day." *Id.* (citing Seaman's Act of 1915, ch. 153, § 3, 38 Stat. 1164, 1164-65, codified at 46 U.S.C. § 596). Like the previous versions of section 4529, the 1915 version, in a single section, provided for penalty wages and set out the types of voyages that would bring a vessel under its purview. *See* § 3, 38 Stat. at 1164-65. Also in the 1915 Act amending section 4529, it was provided that section 4530, which refers explicitly to section 4529, "shall apply to seamen on foreign vessels while in harbors of the United States. . . ." § 4, 38 Stat. at 1165 (stating that "when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, *as provided in* section forty-five hundred and twenty-nine of the Revised Statutes" (emphasis added)). As noted, section 4529 expressly applied only to seamen on the specified voyages. The 1915 amendment to section 4530, with its "as provided in section" 4529 language, appears to be the first time that seamen on foreign vessels were included within

---

instances in which a vessel is on a coastwise voyage, but not engaged in commerce, and accordingly, not engaged in coastwise commerce." *Id.* at 1289 n.9.

the penalty wage provisions' umbrella. The inclusion of seamen on foreign vessels is also seen in the 1920 amendments to section 4530. *See* Merchant Marine Act, ch. 250, § 31, 41 Stat. 988, 1006 (1920).

The penalty wage provision in section 4529 and the related section 4530 found their way into the United States Code in sections 596 and 597 of Title 46.[15] They remained in sections 596 and 597 until amendments were made in 1983. In *Monteiro v. Sociedad Maritima San Nicolas, S.A.*, 280 F.2d 568 (2d Cir. 1960), the Second Circuit read 46 U.S.C. § 597's inclusion of seamen on foreign vessels in conjunction with the penalty wage provision in 46 U.S.C. § 596. 280 F.2d at 572. The Second Circuit stated:

> "Section 597 represents an amendment of Revised Statutes § 4530, by § 4 of the Seaman's Act of 1915, 38 Stat. 1165, as further amended by § 31 of the Act of June 5, 1920, 41 Stat. 1006. Strathearn SS. Co. v. Dillon, 1920, 252 U.S. 348, 40 S.Ct. 350, 64 L.Ed. 607 held that § 4 of the Seaman's Act was applicable to foreign seamen despite contrary

---

[15] Section 596 continues to describe the type of voyages covered, and § 597 continues to provide that "when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, *as provided in section 596 of this title*" and that "this section shall apply to seamen on foreign vessels when in harbors of the United States . . . " (emphasis added). This then is the *only* wage or penalty wage provision for seamen on foreign vessels.

> stipulations in the shipping articles and sustained the constitutionality of the statute as so applied. Although it might have been argued that the foreign vessel proviso referred only to the part payment at each port directed by § 597 and not also to the incorporation by reference of the mandate of § 596 as to wages and penalty wages, the contrary was determined in The Sonderborg, 4 Cir., 47 F.2d 723, 726-727, certiorari denied Akties Dampskibsselskabet Donneborg v. Mikkelsen, 1931, 284 U.S. 618, 52 S.Ct. 7, 76 L.Ed. 527. . . ."

Id. Like the Second Circuit in *Monteiro*, this court has previously been careful to read the statutory provision for seamen's penalty wages together with the provisions surrounding it. *See The Cubadist*, 256 F. 203, 205 (5th Cir. 1919) (stating, "Section 4529 and section 4530 should be construed together.").

The language of section 4529's penalty wage provision "was amended for the last time in 1983, when the maritime laws were recodified." *Sabay*, 211 F.3d 261, 267 (5th Cir. 2000) (citing Pub. L. No. 98-89, 97 Stat. 500, 566 (1983)). The 1983 amendments split up the penalty wage provisions from the delineation of the voyage types that could trigger penalty wages, resulting in the current layout of Chapters 103 and 105 at issue in this appeal. *See* 97 Stat. at 561, 566-67, 570-71 (1983). Although the 1983 amendments significantly reorganized the penalty wage provisions, this reorganization was not intended to effect any substantive changes. *Sabay*, 211 F.3d at 269-70.

Thus, when Congress realized that in the 1983 reorganization it had inadvertently omitted an exception for vessels engaged in "coastwise commerce," it amended 46 U.S.C. § 10504 to include the exception and made the amendment retroactive to the 1983 changes. *See Dunham v. M/V Marine Chemist*, 812 F.2d 212, 212-13 (5th Cir. 1987) (per curiam) (omission corrected in Pub. L. No. 99-36, 99 Stat. 67, 67 (1985)); *see also Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1290 (11th Cir. 2000) ("After the reorganization, Congress noticed that the new penalty wage provisions did not include the coastwise exception found in the prior law. To rectify this error, Congress amended 46 U.S.C. § 10504(d)(1) to exclude vessels engaged in coastwise commerce. . . .") (footnote omitted)).

Thus, the penalty wage statutes' legislative history also unequivocally supports reading 46 U.S.C. §§ 10313 and 10504 in conjunction with 46 U.S.C. §§ 10301 and 10501's voyage requirements. For over one hundred years, voyage requirements and penalty wage provisions resided in the same statutory section, and the change in statutory form caused by the 1983 rearranging amendments was not meant to create any substantive change. Certainly it was not thereby intended, for the first time in the nation's history, to grant seamen on foreign vessels an entitlement to penalty wages on voyages as to which seamen on American vessels would have no such entitlement.

CONCLUSION

Because we find that the voyage requirements outlined in 46 U.S.C. §§ 10301 and 10501 apply to seamen on foreign vessels who wish to invoke the penalty wage provisions in sections 10313 and 10504, we hold that the district court correctly granted summary judgment in favor of Stolt. The vessel on which Kaluom was working, the DLB 801, was not on any of the types of voyages that would bring the vessel under the penalty wage statutes' umbrella.

The judgment of the district court is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

JENGGI KALUOM, Individually, and on behalf of those similarly situated,	§	
Plaintiff,	§	CIVIL ACTION NO. G-04-609
v.	§	
STOLT OFFSHORE, INC., et al.,	§	
Defendants.	§	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This case arises out of alleged violations of the Fair Labor Standards Act ("FLSA") and the maritime penalty wage statutes, codified at 46 U.S.C. §§ 10313 and 10504 (hereinafter "the penalty wage statutes"). Plaintiff, a Malaysian national employed by a Malaysian crewing company and assigned to work on a foreign vessel, claims that he was not paid the full amount of wages to which he was entitled under the FLSA within the time period established by the penalty wage statutes. Plaintiff claims that he was denied federal minimum wage and/or overtime wages due to him under the FLSA, and now seeks damages for unpaid amounts under the penalty wage statutes. Defendant Stolt Offshore, Inc. ("Stolt") filed its Motion for Summary Judgment on the applicability of the wage penalty statutes and the FLSA. For the

reasons stated below, Stolt's Motion for Summary Judgment is **GRANTED**, and Plaintiff's claims against Stolt are hereby **DISMISSED WITH PREJUDICE**.[1]

I. Background

Plaintiff Jenggi Kaluom ("Plaintiff") claims that he was not paid the full amount of wages owed to him in 2002, and he now seeks to recover double-wage penalties under the penalty wage statutes. Plaintiff is a Malaysian national. At the time of the events giving rise to this lawsuit, Plaintiff was employed by a Malaysian crewing company, PPSB.[2] He was assigned to work on the DLB 801, a foreign vessel documented under foreign laws, on a subsea pipeline installation project in the Gulf of Mexico. Originally, Plaintiff was employed as a rigger, and later he worked as a PFM operator. He was assigned to the DLB 801 from September 18, 2002 to November 27, 2002.

At some point in November 2002, Plaintiff was involved in an accident and was subsequently transported from the DBL 801 to a hospital in Galveston, Texas. The vessel continued its operations in the Gulf of Mexico. At the time of the events giving rise to this lawsuit, the DLB 801 was owned by Class 3 Shipping Limited, a Bermuda corporation, and it was

---

[1] The Court does not consider this Order worthy of publication. Accordingly, it has not and requested and does not authorize publication.

[2] His employer is not a party to this lawsuit.

documented under the laws of Panama. The vessel was operated by Stolt Offshore Shipping, Inc., a Panamanian corporation, under a bareboat charter agreement. Stolt is a Louisiana corporation with its principal place of business in the Southern District of Texas.

Plaintiff brought this lawsuit on October 21, 2004, asserting causes of action under 46 U.S.C. § 10313, which governs voyages between a port in the United States and a foreign port ("foreign voyage") or a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Ocean ("intercoastal voyage"), and alternatively under 46 U.S.C. § 10504, the wage penalty statute that governs voyages between a port in one state and a port in another non-adjoining state ("coastwise voyage"). Plaintiff claims that Stolt failed to pay all or the balance of his wages owed when due, and seeks damages of double wages for each day that the payment is or was delayed under the applicable wage penalty statues. Plaintiff's pay was based on the standard Malaysian rate. Plaintiff claims that this is less than the current United States minimum wage.

Plaintiff's claims rest on the theory that he is entitled to the federal minimum wage under 29 U.S.C. § 206, and overtime pay for hours worked over 40 hours per week under 29 U.S.C. § 207. He claims that the balance of his wages that were not paid in accordance with the wage penalty statutes is the difference between his wages under his employment contract with PPSB and the federal minimum wage

and/or the difference between overtime wages under his employment contract and the overtime wages owed under the FLSA. However, Plaintiff's actual claims only allege violations of the penalty wage statutes, not violations of the FLSA.[3]

Stolt moves for summary judgment on two grounds, one of which concerns the wage penalty statute and the other which concerns the applicability of the FLSA. After thoughtful consideration of Stolt's Motion, Plaintiff's Response thereto, the relevant evidence, and applicable law, the Court concludes that Stolt's Motion for Summary Judgment is hereby **GRANTED**.

II. Summary Judgment Standard

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1956). The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact."

---

[3] There is other pending litigation in this Court by Plaintiff against Stolt for violations of the FLSA. *See Case No. 3:05-cv-00642, Jenggi Kaluom v. Stolt Offshore, Inc.*, filed November 28, 2005.

Celotex, 477 U.S. at 323, 106 S. Ct. at 2553. The non-moving party must come forward with "specific facts showing there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). The court must view all evidence in the light most favorable to the non-movant. *See, e.g., Broussard v. Parish of Orleans*, 318 F.3d 644, 650 (5th Cir. 2003), *cert. denied*, 539 U.S. 915, 123 S. Ct. 2276, 156 L. Ed. 2d 130 (2003).

If the evidence would permit a reasonable fact finder to find in favor of the non-moving party, summary judgment should not be granted. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). However, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252,106 S. Ct. 2512. Determining credibility, weighing evidence, and drawing reasonable inferences are left to the trier of fact. *See id.* at 255, 106 S. Ct. at 2513.

III. Applicability of the Wage Penalty Provisions

Plaintiff has made two claims against Stolt. Plaintiff's first cause of action is brought under 46 U.S.C. § 10313, for failure to pay all or the balance of wages when due on a foreign or intercoastal voyage. Plaintiff's second cause of action is brought under 46

U.S.C. § 10504, for failure to pay all or the balance of wages when due on a coastwise voyage. Both statutes are available to seamen serving on "a foreign vessel when in harbor of the United States." 46 U.S.C. sections 10313(i), 10504(e).

The purpose of the wage penalty provisions is to protect seamen from unscrupulous actions by employers such as an arbitrary refusal to pay, and to induce prompt payment. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 572, 102 S. Ct. 3245, 3250, 73 L. Ed. 2d 973 (1982) (citing *Collie v. Ferguson*, 281 U.S. 52, 50 S. Ct. 189, 74 L. Ed. 696 (1930)); *Castillo v. Spiliada Maritime Corp.*, 937 F.2d 240, 243 (5th Cir. 1991); *Fanos v. Maersk Line, Ltd.*, 246 F. Supp. 2d 676, 680 (S.D. Tex. 2003). Under 46 U.S.C. § 10313(f), the master or owner of a vessel must pay each seaman the balance of wages due within 24 hours after the cargo has been discharged or within four days after the seaman is discharged, whichever is earlier. Under 46 U.S.C. § 10504(b), the master must pay each seaman within two days after the termination of the shipping agreement or when the seaman is discharged, whichever is earlier. If the master or owner fails to pay "without sufficient cause," he is required to pay the seaman 2 days' wages for each day that payment is delayed. 46 U.S.C. §§ 10313(g), 10504(c).

Stolt claims that the provision applying the wage penalty statute to seamen on foreign vessels when in harbors of the United States cannot be read in isolation of the other statutory requirements. *See* 46

U.S.C. §§ 10301, 10313, 10501, 10504. That is, the seaman must still be on a foreign vessel engaged in a foreign, intercoastal, or coastwise voyage as defined by the statutes. Plaintiff argues that the statute applies once a foreign vessel is in a harbor of the United States, regardless of the type of voyage that the vessel is engaged in. The Court finds that the statutes support Stolt's interpretation.

The DLB 801 was engaged in a pipeline installation project in the Gulf of Mexico during the period of Kaluom's assignment. The vessel's originating port was in Fourchon, Louisiana, and there is no evidence that the ship went to any other port, nor is there any evidence that it engaged in a foreign, intercoastal or coastwise voyage. A foreign or intercoastal voyage is defined as "a voyage [of an American vessel] between a port in the United States and a port in a foreign country." 46 U.S.C. § 10301. A coastwise voyage is defined as "a voyage between a port in one state and a port in another state (except an adjoining state)." 46 U.S.C. § 10501. The requirement of a foreign, intercoastal or coastwise voyage is a prerequisite to the application of the penalty wage provisions. *See* 46 U.S.C. §§10301, 10501. If a ship is not engaged in one of the specified voyages, the penalty wage provisions do not protect the seamen on those vessels. A plain reading of the statute compels this result, and to read the statute in any other way would be erroneous.

In this case, the DLB 801 was not engaged in a foreign, intercoastal or coastwise voyage. There is no evidence that the DLB 801 went to any port other

than its originating port in Fourchon, Louisiana when it was not performing its operations in the Gulf of Mexico on the Outer Continental Shelf. The fact that Plaintiff ended up at a hospital in Galveston, Texas does not change this result. First, travel from a port in Louisiana to a port in Texas does not qualify as a coastwise voyage because Louisiana and Texas are adjoining states. *See* 46 U.S.C. § 10501. Second, the DLB 801 did not go to Galveston, Texas, but remained in the Gulf after Plaintiff was transported back to shore to receive treatment for his injuries. Since the DLB 801 was not engaged in a foreign, intercoastal, or coastwise voyage, Plaintiff does not meet the statutory prerequisites for application of the penalty wage statutes.[4]

V [sic]. **Conclusions**

Stolt has shown that Plaintiff cannot meet the requirements for application of the penalty wage statutes as a matter of law, and that there are no disputed issues of fact. Plaintiff's causes of action under the wage penalty statutes fail as a matter of law. For these reasons and those provided above, Stolt's Motion for Summary Judgment is respectfully **GRANTED**, and Plaintiff's claims against Stolt are **DISMISSED WITH PREJUDICE**. Each Party is to

---

[4] This Order renders no opinion as to the applicability of the FLSA's minimum wage and overtime provisions to Plaintiff. In this matter, Plaintiff's only claims arise under the wage penalty statutes, not the FLSA.

bear its own taxable costs, expenses, and attorney's fees incurred herein to date. A Final Judgment will be issued contemporaneously with this Order.

IT IS SO ORDERED.

DONE this 6th day of February, 2006, at Galveston, Texas.

/s/ Samuel B. Kent
Samuel B. Kent
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

JENGGI KALUOM, Individually, and on behalf of those similarly situated,	§	
Plaintiff,	§	CIVIL ACTION
v.	§	NO. G-04-609
STOLT OFFSHORE, INC., et al.,	§	
Defendants.	§	

FINAL JUDGMENT

As set forth in the Court's Order entered this date, Stolt Offshore Inc.'s Motion for Summary Judgment is hereby **GRANTED**. Any and all of Plaintiff's claims asserted against Defendant Stolt Offshore, Inc. in this action are hereby **DISMISSED WITH PREJUDICE**. All relief not herein provided is expressly **DENIED**. Each Party is to bear its own taxable costs, expenses, and attorneys' fees incurred herein to date. **THIS IS A FINAL JUDGMENT.**

IT IS SO ORDERED.

DONE this 6th day of February, 2006, at Galveston, Texas.

/s/ Samuel B. Kent
Samuel B. Kent
United States District Judge

46 U.S.C. § 10313. Wages

(a) A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.

(b) Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.

(c) When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.

(d) A seaman is not entitled to wages for a period during which the seaman –

(1) unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or

(2) lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht.

(I) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

---

46 U.S.C.A. § 10504. Wages

(a) After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of

this title or when the seaman is discharged, whichever is earlier.

(c) When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(d) Subsections (b) and (c) of this section do not apply to:

(1) a vessel engaged in coastwise commerce.

(2) a yacht.

(3) a fishing vessel.

(4) a whaling vessel.

(e) This section applies to a seaman on a foreign vessel when in harbor of the United States. The courts are available to the seaman for the enforcement of this section.